

UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

IN RE: NEW ENGLAND)
COMPOUNDING PHARMACY, INC.) MDL No. 2419
PRODUCTS LIABILITY LITIGATION) Dkt. No. 1:13-md-2419-FDS

)
This Document Relates to:)
)
Suits Identified in Exhibit A.)

)

The Tennessee Defendants'
Motion for Summary Judgment

Saint Thomas Outpatient Neurosurgical Center, LLC (“STOPNC”), Howell Allen Clinic, a Professional Corporation (“Howell Allen”), John Culclasure, M.D. (“Dr. Culclasure”), Debra Schamberg, R.N. (“Ms. Schamberg”), Specialty Surgery Center, Crossville, PLLC (“SSC”), Kenneth R. Lister, M.D. (“Dr. Lister”), and Kenneth Lister, M.D., P.C. (“Dr. Lister’s Practice”) (collectively “the Tennessee Defendants”), respectfully move for summary judgment pursuant to Rule 56 of the Federal Rules of Civil Procedure.

All of the Plaintiffs’ claims are governed exclusively by the Health Care Liability Act, Tenn. Code Ann. § 29-26-101 *et seq.*, as these are “health care liability actions” as defined by Tenn. Code Ann. § 29-26-101(a), regardless of the labels applied in the Plaintiffs’ Complaints.

The Plaintiffs have failed to comply with the good faith certification requirement of the Health Care Liability Act, set out at Tenn. Code Ann. § 29-26-122. The Plaintiffs’ failure to comply with Tenn. Code Ann. § 29-26-122 entitles Defendants to final judgment on the Plaintiffs’ claims, as a matter of law.

In support of this motion, the Tennessee Defendants rely upon and simultaneously file and serve:

- Supporting Memorandum of Law.
- Fed. R. Civ. P. 56(c)(1) Statement of Undisputed Material Facts.
- Affidavit of John W. Culclasure, M.D.
- Affidavit of Kenneth R. Lister, M.D.

Respectfully submitted,

GIDEON, COOPER & ESSARY, PLC

/s/ Chris Tardio

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***Attorneys for the Tennessee
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CERTIFICATE OF SERVICE

I hereby certify that this document filed through the CM/ECF system will be served electronically to the registered participants identified on the Notice of Electronic Filing and copies will be e-mailed or mailed via regular U.S. mail to those participants identified as unregistered this 10th day of January, 2014.

/s/ Chris Tardio

Chris Tardio